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Wrongful Convictions as a Result of Public Defender
Representation

A thesis
presented to
the faculty of the Department of Criminal Justice and
Criminology
East Tennessee State University

In partial fulfillment
of the requirements for the degree
Master of Arts in Criminal Justice and Criminology

by
Annie Elizabeth Ross
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Larry Miller, Ph.D., Chair
Dennis Hamm, Ph.D.
John Briley, Ph.D.

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ABSTRACT

Wrongful Convictions as a Result of Public Defender Representation

by

Annie Elizabeth Ross

Our criminal justice system works very hard to prevent criminals from harming other individuals; however, unfortunately mistakes happen. One wrongful conviction is one too many. There are multiple factors that can be assumed to be the cause of wrongful convictions. However, due to the lack of directly related research, the determents are not well established. The following research addresses wrongful convictions as a result of public defender representation. Through the process of theory construction, the research uses critical race theory and social disorganization theory to show the relationship between court appointed representation and wrongful convictions. A new theory is also established that is referred to as the partial load reduction theory. This theory establishes the relationship that exists between wrongful convictions and public defender representation and provides solutions as well as new avenues for future research.

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CHAPTER 1

INTRODUCTION

During the past 35 years there has been a dramatic increase in incarceration in the United States. The majority of the increase has been attributed to new policies such as the war on drugs and mandatory sentences for drug crimes. The question is raised as to whether our criminal justice system and other societal systems are fair or racially biased. Racial discrimination is unconstitutional in the present; however, that has not always been the case. The past genocide against American Indians and slavery haunt our history. Even though women are present in every professional field, men still receive higher pay. And although many Americans are experiencing economic success, there is a large pool of unemployed adults and children living in poverty (Zatz, 2000). This chapter examines the racial disproportionality that exists in our criminal justice system and what implications it has. The issue of wrongful convictions as a result of public defender representation is one implication that is focused on.

Racial Disproportionality

More than 47 million Americans have either state or federal criminal records and an estimated 13 million Americans have a felony conviction. Around 7 million adults are currently under correctional supervision, 2 million of whom are incarcerated. Out of those 3,500 are awaiting their execution (Brewer & Heitzeg, 2008). Low income individuals and minorities make up an overwhelming disproportion of the statistics. The majority of those imprisoned were unemployed at the time of their conviction or working for minimum wage. Around 50% of all prisoners are black, 30 % are white, and 17 % are Hispanic (Brewer & Heitzeg, 2008) .

Prison, More Common Than College for Some

For every black male who graduates from college, one hundred others are in prison or in jail. According to Bobo and Thompson (2006), authors of an article titled "Unfair by Design, the war on drugs, race, and the legitimacy of the criminal justice system" for black males the likelihood of becoming incarcerated is much greater than obtaining a bachelor degree. The prison experience has become normal and routine in the lower income minority communities, and there is no longer a negative stigma attached. Bobo and Thompson claim that incarceration is becoming an expected normal course of events in many black

communities. They go on to say that in 1999 60% of black males between the ages of 30 and 34 without a high school diploma had been incarcerated at some point.

The Cycle. Prison is not acting as a deterrent of crime (Logan, 2006). A first time non-violent offender is arrested, charged, and placed on probation. The offender will likely violate because the offender is being closely watched. When an offender violates probation the offender is incarcerated. While incarcerated with more serious offenders, the first time offender learns the criminal culture from the offender's peers. The offender is released and while still being closely watched on probation, will likely violate again. When the criminality continues and the offender commits a violent crime, the indigent defendant is appointed a public defender. This vicious cycle is what clogs the system and overflows the case loads of public defenders. This can be seen in the trend that took place between 1985 and 1995 where there was an 84% increase in incarceration and the majority of offenders were nonviolent drug and property offenders. Drug offenders were responsible for over half of the increase. Out of the spike in incarceration, less than one in four involved a violent offense (Bobo & Thompson, 2006).

The increase in incarceration over the past decades has posed many problems, one of many being the overload of cases for

public defenders. From 1880 to 1980, 285,000 inmates joined the prison systems and from 1980 to 2000 the nation added 1.1 million inmates. From 1850 to 2000, the prison system was inflated 206 times over 12-fold population growth (Bobo & Thompson, 2006). As evidenced in the growth statistics, with an increase of inmates 206 times more than the population growth rate, this results in a backup in the criminal justice system.

Lack of Resources. Due to the overload of cases that public defenders have, they are unable to provide the needed attention to each case. This is true with capital cases as well. Capital cases should be provided ample attention because someone's life is at stake. The Sixth Amendment to the Constitution guarantees individuals who are charged with a criminal offense a right to counsel. It was not until 1968 that the Supreme Court interpreted the Sixth Amendment to include the right to counsel in all stages of the court proceedings for felony defendants (Cleveland Foundation, 1976). In *Powell v. Alabama* the evaluation of counsel effectiveness took place and was later used as precedent in *Mitchell v. United States* which established that judges have a duty to minimally evaluate the quality of representation (Cleveland State Law Review, 1973). Also in *Strickland v. Washington* the Supreme Court sought to establish a

uniform policy that guaranteed criminal defendants effective counsel.

However, the courts created a difficult burden for proving deficit performance of counsel. So in return the court established that during the penalty phase, a defendant may establish prejudice without having to show the counsel's deficit affected the outcome. For the guilt phase to prove ineffectiveness reasonable probability drops to reasonable doubt (Shugerman, 2000). Although the cases were established in good faith as an attempt to balance the right to effective counsel, the issue remains that the new precedent only requires a minimal evaluation of the quality of counsel. Racial minorities make up an overwhelming disproportionate number of those incarcerated. The disproportionate number of minorities being arrested and charged limits the resources of public defenders. Because of the limitations of public defenders, capital defendants who use public defenders are sometimes wrongfully convicted or sentenced.

As stated earlier, in the past 35 years there has been a dramatic increase in incarceration in the United States. With the majority of the imprisoned being unemployed at the time of their conviction and half of those incarcerated being black, there is a clear problem occurring within the criminal justice

system. The first problem is the racial disproportionality in incarceration.

Race and Its Impact on Sentencing. Demuth and Steffensmeier (2004) looked at a defendants ethnicity and the sentence outcome in large urban courts and revealed that ethnicity does significantly affect sentence outcomes. The study only encompassed white, black, and Hispanic defendants because other ethnic groups did not constitute a large enough sample to show significance. Race and ethnicity were coded using three dummy variable categories that were: non-Hispanic white, non-Hispanic black, and Hispanic of any race. To measure offense severity, nine dummy variables were used. These were the most violent such as rape, robbery, assault, and other; property offenses such as burglary, theft, and other; as well as drug offenses such as trafficking, and other. The researchers also looked at prior records which they measured in three ways. The first measurement assessed prior contact with the criminal justice system. They used four dummy variables for this index: Has the defendant ever been arrested on a felony charge? Has the defendant ever been convicted of a felony? Has the defendant ever been to jail? Has the defendant ever been to prison? The second measurement looked at whether the defendant had ever failed to appear. The third measurement looked at the criminal status of the defendant,

whether the defendant was on release, probation, or had another case pending at the time of the defendant's arrest.

Demuth and Steffensmeier (2004) first examined the descriptive statistics at the sentencing stage. Second, they tested in order to determine whether racial and ethnic disparities existed in the entire sample for other variables that could share an extreme relationship with both ethnicity and sentence severity. Third they looked at the type of offense to determine the effects of ethnicity and race on property crimes, drug offenses, and violent crimes. Lastly, the data were assessed by combining the white and Hispanic defendants into a single homologous group to determine whether this would impact the size and statistical significance of black verses non-black racial sentencing differences. The findings from the research revealed that Hispanic defendants were sentenced more similarly to black defendants than white defendants.

For different types of offenses the analyses revealed that for property offenders race plays a significant role in the sentencing. Ethnicity effects were revealed to be the largest in the sentencing of drug offenders. Lastly, the results revealed that when testing the data to determine whether combining white and Hispanic defendants into a single homologous group would impact the size and statistical significance of black verses

white racial sentencing differences. When white-Hispanic is grouped in a single group, it cancels out the large black-white sentencing difference that exist (Demuth & Steffensmeier, 2004). The problem of race affecting sentencing can lead to other issues within the system as well. Because racial minorities are receiving sentences of incarceration at a higher rate than whites, other facets of the system must be evaluated in order to find the root of the problem and attempt to make a change.

It is generally well established that minorities are being incarcerated in increasing numbers each decade (Demuth & Steffensmeier, 2004). It is also well established that minorities being arrested have lower paying jobs or are unemployed as a result of lack of education. Due to the lower income position that the defendants are in, the majority of minority defendants use the resources of public defenders. As previously demonstrated, because of the disproportionate number of lower income and minority defendants entering the justice system, the public defenders have high case loads that in turn limit their monetary resources as well as their time. Because of this, capital defendants are sometimes wrongfully convicted or sentenced because the public defenders do not have the resources and time to devote to their cases.

The Public Defender System

Indigent representation is provided through three different avenues: a public defender office, an assigned counsel system, and a contract system. The following information, which was provided by the Bureau of Justice Statistics' 2007 Census of Public Defender Offices, focuses on public defender offices (U.S. Department of Justice 2009). In 2007, 957 public defender offices in 49 states provided legal counsel for indigent defendants. Within 2007 public defender offices received more than 5.5 million cases. The offices only employed 15,000 full time litigating attorneys. The state level had a median of 163 attorneys per state-based program. The county level had a median of seven per office. The reported spending was more than \$2.3 billion in operating costs. To determine whether a client was indigent, the public defender program used multiple criteria for examination. The first was income level followed by whether the defendant received public assistance, sworn defendant application, and debt level.

State based public defender programs reported assisting a median of 82 noncapital felony cases and 217 misdemeanor cases. County based public defender programs reported an average of 100 noncapital felony cases and 146 misdemeanor cases. The Census of Public Defenders Offices was unable to estimate a median case

load due to the reasoning that they only collected data for 2007 and they could not account for ongoing cases received prior to 2007.

In order to obtain the information, the 2007 Census of Public Defender Offices sent out questionnaires to approximately 1,050 public defender offices in the United States. Out of those offices, 97% provided responses that served as critical items on the survey instrument. The results from the U.S. Department of Justice Public Defender Census are listed in the following tables.

1. Characteristics of Public Defender Offices
2. Characteristics of State Public Defender Offices
3. Characteristics of County Public Defender Offices
4. Characteristics of State Written Criteria
5. Characteristics of County Written Criteria
6. Characteristics of State Formal Standards
7. Characteristics of County Formal Standards
8. Characteristics of State Cases
9. Characteristics of County Cases
10. Characteristics of State Staff
11. Characteristics of County Staff
12. Characteristics of State Caseload Limits
13. Characteristics of Office Caseload Limits

Table 1. Characteristics of Public Defender Offices

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Table 1. Characteristics of public defender offices, 2007

Type of offices	Number of states ^a	Population served (thousands)	Number of offices ^b	Number of cases received ^c	FTE litigating attorneys ^d	Total expenditures (thousands)
U.S. total	50	240,160	957	5,572,450	15,026	\$2,310,040
State-based	22	73,370	427	1,491,420	4,321	833,358
County-based	28	166,790	530	4,081,030	10,705	1,476,682
County/state funded	12	53,991	193	1,372,633	3,580	423,673
County-funded	16	112,799	337	2,708,397	7,126	1,053,009

^aIncludes the District of Columbia, which is classified as county-funded public defender office due to its unique status outside of any state's jurisdiction. In 2007 Maine did not have city, county, or state public defender offices.

^bExcludes public defender offices that are privately funded or principally funded by federal or tribal governments and those that provide primarily conflict of interest representation, or felony capital, juvenile, or appellate cases services. Also excludes all other providers of indigent services, including attorneys or offices providing contract or assigned council services on an individual or case basis.

^cAlaska's state-based public defender program did not report caseload data. Data available for 95% of county/state/federally funded offices and 98% of county-funded only offices.

^dFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qfd/meta/long_58632.htm.

Table 2. Characteristics of State Public Defender Offices

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	State population (thousands)	Number of offices	Number of cases received ^a	FTE litigating attorneys ^b	Total expenditures ^c (thousands)
Total	73,370	427	1,491,420	4,321	\$833,358
Median	2,907	19	72,740	163	\$33,326
Alaska	681	13	/	93	\$17,231
Arkansas	2,831	31	83,810	305	20,047
Colorado	4,843	22	90,620	241	37,884
Connecticut	3,490	27	83,100	127	47,600
Delaware	862	7	29,410	70	13,713
Hawaii	1,277	5	43,770	93	8,500
Iowa	2,983	16	70,150	96	48,533
Kentucky	4,236	31	148,520	327	32,513
Maryland	5,619	16	199,750	508	77,519
Massachusetts	6,468	28	16,820	197	123,400
Minnesota	5,182	27	139,120	371	61,800
Missouri	5,878	36	83,160	261	34,138
Montana	957	21	22,650	128	18,659
New Hampshire	1,312	10	24,130	107	12,668
New Jersey	8,653	23	100,240	458	99,000
New Mexico	1,964	13	72,740	223	37,083
North Dakota	638	4	2,270	10	1,700
Rhode Island	1,053	6	18,760	40	8,782
Vermont	621	11	11,690	31	6,839
Virginia	7,699	29	95,340	305	37,369
Wisconsin	5,599	35	142,400	294	80,766
Wyoming	523	16	12,980	38	7,615

/Data not reported.

^aRounded to the nearest ten.

^bFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. See U.S. Census Bureau, <http://quickfacts.census.gov/qfd/meta/long_58632.htm>.

^cThe Census of Public Defender Offices, 2007, instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

Table 3. Characteristics of County Public Defender Offices

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	State population (thousands)	Number of offices	Number of cases received ^a	FTE litigating attorneys ^b	Total expenditures ^c (thousands)
Total	73,370	427	1,491,420	4,321	\$833,358
Median	2,907	19	72,740	163	\$33,326
Alaska	681	13	/	93	\$17,231
Arkansas	2,831	31	83,810	305	20,047
Colorado	4,843	22	90,620	241	37,884
Connecticut	3,490	27	83,100	127	47,600
Delaware	862	7	29,410	70	13,713
Hawaii	1,277	5	43,770	93	8,500
Iowa	2,983	16	70,150	96	48,533
Kentucky	4,236	31	148,520	327	32,513
Maryland	5,619	16	199,750	508	77,519
Massachusetts	6,468	28	16,820	197	123,400
Minnesota	5,182	27	139,120	371	61,800
Missouri	5,878	36	83,160	261	34,138
Montana	957	21	22,650	128	18,659
New Hampshire	1,312	10	24,130	107	12,668
New Jersey	8,653	23	100,240	458	99,000
New Mexico	1,964	13	72,740	223	37,083
North Dakota	638	4	2,270	10	1,700
Rhode Island	1,053	6	18,760	40	8,782
Vermont	621	11	11,690	31	6,839
Virginia	7,699	29	95,340	305	37,369
Wisconsin	5,599	35	142,400	294	80,766
Wyoming	523	16	12,980	38	7,615

/Data not reported.

^aRounded to the nearest ten.

^bFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. See U.S. Census Bureau, <http://quickfacts.census.gov/qfd/meta/long_58632.htm>.

^cThe Census of Public Defender Offices, 2007, instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

Table 4. Characteristics of State Written Criteria

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Number of offices	Jurisdiction population (thousands) ^a		Number of cases received		FTE litigating attorneys		Total operating expenditures (thousands) ^b	
		Total	Median per office	Total	Median per office	Total	Median per office	Total	Median per office
All county-based offices	530	166,790	117	4,081,030	2,482	10,705	7	\$1,476,682	\$708
County-funded	337	112,799	91	2,708,397	1,995	7,126	5	\$1,053,009	\$543
Less than 1,000 cases received	112	3,661	23	47,075	351	229	2	\$16,324	\$106
1,000 - 2,500	74	7,151	67	119,143	1,513	392	5	42,527	496
2,501 - 5,000	58	14,473	147	209,912	3,567	722	9	100,522	977
More than 5,000	88	84,775	498	2,332,267	12,078	5,722	32	882,696	4,000
County/state funded	193	53,991	147	1,372,633	3,518	3,580	9	\$423,673	\$960
Less than 1,000 cases received	24	1,546	47	15,507	734	158	4	\$7,968	\$309
1,000 - 2,500	49	5,010	72	81,253	1,597	301	6	33,385	650
2,501 - 5,000	45	7,675	144	164,705	3,600	468	9	45,644	1,037
More than 5,000	66	35,969	349	1,111,168	8,195	2,412	23	288,896	2,767

Note: Office size statistics may not sum to totals due to missing cases received data. Data available for 99% of offices.

^aRounded to nearest thousand.

^bThe Census of Public Defender Offices, 2007, instructed respondents to report either fiscal or calendar year 2007 total public defender office expenditures for indigent defense functions, excluding any fixed capital costs.

Table 5. Characteristics of County Written Criteria

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Offices with formal/written criteria	Median number of criteria considered ^a	Income level	Receipt of public assistance	Defendant's Sworn application	Debt level	Residence in public institution ^b	Ability to post bail/bond	Defendant's Unsworn application	Federal poverty guidelines	Judge's discretion ^c	Other ^d
All county-based offices	439	6	98 %	62 %	79 %	66 %	66 %	34 %	41 %	62 %	67 %	16 %
County-funded	269	6	97 %	63 %	77 %	63 %	68 %	30 %	46 %	58 %	65 %	18 %
Less than 1,000 cases received	92	5	98 %	45 %	80 %	62 %	63 %	30 %	42 %	46 %	78 %	19 %
1,000 - 2,500	67	6	97	73	81	63	75	28	45	70	61	19
2,501 - 5,000	47	6	96	72	77	53	64	28	45	68	70	15
More than 5,000	58	6	98	74	69	78	71	29	53	59	48	21
County/state funded	170	6	99 %	61 %	81 %	71 %	64 %	39 %	33 %	67 %	69 %	12 %
Less than 1,000 cases received	20	6	100 %	45 %	90 %	80 %	70 %	20 %	15 %	60 %	75 %	25 %
1,000 - 2,500	46	6	100	61	83	63	72	39	24	67	65	13
2,501 - 5,000	41	5	98	51	68	56	54	37	39	61	56	12
More than 5,000	57	7	98	70	88	83	61	47	42	75	79	9

Note: Includes offices classified as the primary or alternate public defender office for the jurisdiction. Offices that handled primarily conflict of interest cases or provided representation specifically in felony capital cases were not included.

^aThe Census of Public Defender Offices, 2007, included questions about 10 criteria used to determine indigence.

^bIncludes residence in a public mental health institution or a correctional institution.

^cJudge's decision based on defendant's testimony.

^dIncludes evaluation of assets and property owned, child support obligations, the complexity of the case and the cost of litigation, determination by a county screening agency, number of defendants, and bankruptcy.

Table 6. Characteristics of State Formal Standards

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	Continuing legal education for attorneys	Annual attorney performance review	Attorney representation of client through all stages of proceedings	Matching attorney experience with case complexity	Matching attorney experience with types of cases handled	Client eligibility screening	Maximum number of cases an attorney can have at one time	Attorney appointment within 24 hours of client detention
Total*	18	17	14	14	13	12	9	5
Arkansas	X	X	X	X	X	X		
Colorado	X	X	X	X	X	X	X	
Connecticut	X	X	X	X		X	X	
Delaware	X	X	X	X	X	X		
Hawaii	X		X	X	X			
Iowa	X	X	X					
Kentucky	X	X	X	X	X			X
Maryland	X	X		X	X	X	X	
Massachusetts	X	X	X	X	X	X	X	X
Minnesota		X						
Montana	X	X	X	X	X	X	X	
New Hampshire	X	X	X	X	X		X	X
New Jersey	X	X	X	X	X	X	X	X
North Dakota	X	X	X			X		X
Rhode Island	X					X		
Vermont	X	X		X	X		X	
Virginia	X	X	X	X	X	X		
Wisconsin	X	X	X	X	X	X	X	
Wyoming	X	X						

Note: The Census of Public Defender Offices, 2007, asked respondents to indicate whether their program's operating guidelines included a standard related to each of the general areas listed in this table. Data were not reported by Alaska, Missouri, or New Mexico.

*Total based on the 19 states that provided data on standards and guidelines.

Table 7. Characteristics of County Formal Standards

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Number of offices	Continuing legal education for attorneys	Annual attorney performance review	Attorney representation of client through all stages of proceedings	Matching attorney experience with case complexity	Matching attorney experience with types of cases handled	Client eligibility screening	Maximum number of cases an attorney can have at one time	Attorney appointment within 24 hours of client detention
All county-based offices	530	92 %	48 %	60 %	58 %	51 %	49 %	21 %	28 %
County-funded	337	90 %	45 %	61 %	55 %	47 %	44 %	18 %	27 %
Less than 1,000 cases received	112	84 %	16 %	55 %	27 %	25 %	37 %	11 %	15 %
1,000 - 2,500	74	88	38	55	50	39	54	15	27
2,501 - 5,000	58	97	53	61	72	61	58	21	30
More than 5,000	88	94	82	73	84	73	36	26	38
County/state funded	193	97 %	52 %	57 %	63 %	59 %	57 %	27 %	29 %
Less than 1,000 cases received	24	87 %	25 %	50 %	38 %	42 %	50 %	29 %	21 %
1,000 - 2,500	49	98	49	67	63	63	63	22	14
2,501 - 5,000	45	100	61	55	64	50	68	23	27
More than 5,000	66	99	61	55	71	67	50	33	44

Note: Includes offices classified as the primary or alternate public defender office for the jurisdiction. Offices that handled primarily conflict of interest cases or provided representation specifically in felony capital cases were not included. The Census of Public Defender Offices, 2007, asked respondents to indicate whether their program's operating guidelines included a standard related to each of the general areas listed in this table. Data available for 99% of offices.

Table 8. Characteristics of State Cases

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	All cases received ^a	FTE litigating attorneys ^b	Number of capital cases ^c	Felony (non-capital) cases			Misdemeanor cases ^d			Appeals cases		
				Number	Percent of all cases received	Per FTE attorney ^e	Number	Percent of all cases received	Per FTE attorney ^e	Number	Percent of all cases	Per FTE attorney ^e
Total	1,491,420	4,321	436	378,400	25 %	88	575,770	40 %	133	10,760	1 %	3
Median	72,740	163	2	11,420	16 %	82	20,340	28 %	217	100	-- %	2
Alaska	/	93	/	/	/	/	/	/	/	/	/	/
Arkansas	83,810	305	99	29,190	35 %	96	35,500	42 %	116	150	-- %	--
Colorado	90,620	241	13	55,160	61	229	26,670	29	111	0	0	0
Connecticut	83,100	127	56	/	/	/	27,520	33	217	320	--	3
Delaware	29,410	70	9	5,820	20	83	20,340	69	291	110	--	2
Hawaii	43,770	93	~	4,600	11	49	31,170	71	335	0	0	0
Iowa	70,150	96	~	10,000	14	105	25,000	36	262	60	--	1
Kentucky	148,520	327	181	33,170	22	101	86,560	58	265	2,230	2	7
Maryland	199,750	508	15	41,280	21	81	124,960	63	246	60	--	--
Massachusetts	16,820	197	~	12,830	76	65	3,180	19	16	270	2	1
Minnesota	139,120	371	~	28,000	20	75	19,750	14	53	1,200	1	3
Missouri	83,160	261	/	/	/	/	/	/	/	/	/	/
Montana	22,650	128	2	5,800	26	45	12,300	54	96	290	1	2
New Hampshire	24,130	107	1	7,420	31	69	13,350	55	125	90	--	1
New Jersey ^f	100,240	458	18	65,110	65	142	/	/	/	1,260	1	3
New Mexico	72,740	223	6	/	/	/	/	/	/	0	0	0
North Dakota	2,270	10	~	800	35	80	650	29	65	50	2	5
Rhode Island	18,760	40	~	4,770	25	119	10,870	58	272	60	--	1
Vermont	11,690	31	~	2,290	20	75	6,850	59	225	60	1	2
Virginia	95,340	305	34	36,280	38	119	47,280	50	155	1,340	1	4
Wisconsin	142,400	294	~	35,800	25	122	71,810	50	245	3,160	2	11
Wyoming	12,980	38	2	120	1	3	12,000	92	316	60	--	2

Note: Caseload data not available for Alaska, Missouri, and New Mexico. Total, felony (non-capital), and misdemeanor cases received rounded to the nearest ten.

/ Data not reported.

-- Less than 0.5.

~ Not applicable.

^aIncludes only misdemeanors that carry a jail sentence.

^bIncludes felony (capital and non-capital), misdemeanor, and appeals cases; and civil, juvenile, and ordinance violations cases (not shown on table).

^cFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, <http://quickfacts.census.gov/qfd/meta/long_58532.htm>.

^dThe following states did not have the death penalty in 2007: Alaska, Hawaii, Iowa, Massachusetts, Minnesota, North Dakota, Rhode Island, Vermont, and Wisconsin. Public defenders in Missouri and New Mexico represented indigent defendants in death penalty cases but did not report data on number of cases, expenditures, or use of specialized death penalty defense units.

^eTotal cases received does not include misdemeanor cases.

Table 9. Characteristics of County Cases

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Number of offices	All cases received ^a	Number of FTE litigating attorneys ^c	Number of capital cases ^d	Felony (non-capital) cases			Misdemeanor cases ^a			Appeals cases		
					Number	Percent of all cases received	Per FTE attorney ^c	Number	Percent of all cases received	Per FTE attorney ^c	Number	Percent of all cases received	Per FTE attorney ^c
All county-based offices	530	4,081,030	10,705	1,210	1,231,435	30 %	100	2,067,403	49 %	146	20,183	— %	—
County-funded	337	2,708,397	7,128	545	667,911	25 %	79	1,514,771	52 %	157	11,412	— %	—
Less than 1,000 cases received	112	47,075	229	13	13,509	25 %	50	23,742	52 %	104	639	— %	—
1,000 - 2,500	74	119,143	392	29	35,322	26	88	56,337	51	167	898	—	1
2,501 - 5,000	58	209,912	722	34	66,313	27	98	97,739	52	188	924	—	—
More than 5,000	88	2,332,267	5,722	469	552,767	23	91	1,336,953	55	240	8,951	—	—
County/state funded	193	1,372,633	3,580	665	563,524	41 %	150	552,632	38 %	119	8,771	— %	—
Less than 1,000 cases received	24	15,507	158	6	7,165	39 %	76	5,790	35 %	66	29	— %	—
1,000 - 2,500	49	81,253	301	16	42,779	50	148	26,614	36	90	354	—	1
2,501 - 5,000	45	164,705	468	26	77,138	42	159	60,325	43	130	478	—	1
More than 5,000	66	1,111,168	2,412	617	438,442	38	169	459,903	44	174	7,910	—	—

Note: Includes offices classified as the primary or alternate public defender office for the jurisdiction. Excludes offices that handled primarily conflict of interest cases or provided representation specifically in felony capital cases. Cases received refers to cases appointed to and accepted for representation by the public defender office.

— Less than 0.5.

^aIncludes only misdemeanors that carry a jail sentence.

^cIncludes felony (capital and non-capital), misdemeanor, and appeals cases; and civil, juvenile, and ordinance violations cases (not shown on table).

^dFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qst/metro/long_58632.htm.

^eExcludes the District of Columbia, Michigan, New York, and West Virginia because they did not have the death penalty.

Table 10. Characteristics of State Staff

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	FTE attorneys ^a				FTE support staff ^a					
	Chief public defender	Managing attorneys	Supervisory attorneys	Assistant public defenders	Total	Investigators	Paralegals	Administrative	Clerical	Other ^b
Total	329	25	314	3,153	2,963	714	117	672	976	485
Median	11	0	5	126	85	25	2	32	11	17
Alaska	1	0	15	78	56	15	6	5	31	0
Arkansas	10	0	24	274	27	6	4	5	6	6
Colorado	22	2	2	218	163	72	4	59	15	14
Connecticut	27	0	0	100	126	46	2	0	38	40
Delaware	1	1	8	62	74	14	0	35	5	20
Hawaii	5	6	0	89	31	7	0	23	2	0
Iowa	14	0	0	83	51	20	0	31	0	0
Kentucky	31	0	8	290	172	46	6	46	50	24
Maryland	26	0	89	403	716	30	35	50	450	151
Massachusetts	30	2	18	152	106	31	2	33	18	23
Minnesota	10	0	42	319	157	35	24	69	6	23
Missouri	36	0	0	261	/	/	/	/	/	/
Montana	/	/	/	/	89	17	4	52	9	7
New Hampshire	10	1	1	96	81	29	0	44	7	1
New Jersey	/	/	/	/	577	233	12	0	279	53
New Mexico	10	1	42	181	/	/	/	/	/	/
North Dakota	4	0	0	6	9	0	1	4	2	2
Rhode Island	4	5	0	35	55	7	0	2	24	23
Vermont	9	0	0	20	30	10	1	11	6	3
Virginia	30	0	52	224	210	51	0	109	14	37
Wisconsin	37	7	13	246	212	43	2	92	17	59
Wyoming	13	0	0	19	25	3	16	5	0	2

Note: State data may not sum to totals due to rounding.

/Data not reported.

^aFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qfd/meta/long_58632.htm.

^bIncludes social workers, indigence screeners, training staff, interns, human resources staff, forensic specialists, clinical psychologists, information technology (IT) specialists, interpreters, and investigators hired on a contractual basis.

Table 11. Characteristics of County Staff

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Number of offices	Median FTE litigating attor- neys per office ^a	FTE attorneys ^a				Median FTE support staff per office ^a	FTE support staff ^a				
			Chief public defender	Managing attorneys	Supervisory attorneys	Assistant public defenders		Investigators	Paralegals	Administrative	Clerical	Other ^b
All county-based offices	530	7	543	187	979	9,035	4	1,529	779	2,419	1,056	938
County-funded	337	5	289	158	612	6,087	3	967	469	1,344	753	665
Less than 1,000 cases received	112	2	85	0	3	87	1	10	13	77	13	21
1,000 - 2,500	74	5	64	1	18	256	3	38	22	115	37	45
2,501 - 5,000	58	9	53	12	88	541	5	90	28	169	113	212
More than 5,000	88	32	84	144	494	5,152	18	627	404	969	587	386
County/state funded	193	9	255	29	367	2,949	6	562	310	1,075	303	273
Less than 1,000 cases received	24	4	56	0	2	97	2	8	45	35	4	3
1,000 - 2,500	49	6	46	1	19	223	4	52	30	107	29	9
2,501 - 5,000	45	9	42	0	45	372	6	71	37	137	18	29
More than 5,000	66	23	104	25	285	2,040	22	406	196	643	238	231

^aFTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qft/meta/long_58632.htm.

^bIncludes social workers, indigence screeners, training staff, interns, human resources staff, forensic specialists, clinical psychologists, information technology (IT) specialists, interpreters, and investigators hired on a contractual basis.

Table 12. Characteristics of State Caseload Limits

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

State	Felony non-capital cases received per FTE attorney *	Offices with --	
		Caseload limits	Authority to refuse appointments due to caseload
Alaska	/	Yes	/
Arkansas	96	No	Yes
Colorado	229	Yes	No
Connecticut	/	Yes	No
Delaware	83	No	No
Hawaii	49	No	No
Iowa	105	No	Yes
Kentucky	101	No	No
Maryland	81	Yes	No
Massachusetts	65	Yes	Yes
Minnesota	75	No	No
Missouri	/	No	No
Montana	45	Yes	Yes
New Hampshire	69	Yes	Yes
New Jersey	142	Yes	No
New Mexico	/	No	No
North Dakota	80	No	Yes
Rhode Island	119	No	No
Vermont	75	Yes	No
Virginia	119	No	Yes
Wisconsin	122	Yes	No
Wyoming	3	Yes	Yes

/ Data not reported.

*FTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qfd/meta/long_58632.htm.

Table 13. Characteristics of Office Caseload Limits

Note: This table was revised June 22, 2010 in accordance with the revised office classification described on page 1 of this report.

Office type and caseload	Number of offices	Felony (non-capital) cases received per FTE attorney*	Percent of offices with—	
			Caseload limits	Authority to refuse appointments due to caseload
All county-based offices	530	100	15 %	36 %
County-funded	337	79	12 %	33 %
Less than 1,000 cases received	112	50	9	21
1,000 - 2,500	74	88	11	25
2,501 - 5,000	58	98	12	34
More than 5,000	88	91	16	57
County/state funded	193	150	22 %	42 %
Less than 1,000 cases received	24	76	25	58
1,000 - 2,500	49	148	18	31
2,501 - 5,000	45	159	21	48
More than 5,000	66	169	24	39

Note: Includes offices classified as the primary or alternate public defender office for the jurisdiction. Offices that handled primarily conflict of interest cases or provided representation specifically in felony capital cases were not included. Details do not sum to total due to missing data on the volume of cases received by some offices.

*FTE (full-time equivalent) is a computed statistic calculated by dividing the hours worked by part-time employees by the standard number of hours for full-time employees (40 hours per week) and then adding the resulting quotient to the number of full-time employees. Source: U.S. Census Bureau, http://quickfacts.census.gov/qfd/meta/long_58632.htm.

Currently in the social science world there is not a theory that addresses the issue of wrongful convictions as a result of public defender representation. However, critical race theory and social disorganization theory can be examined and constructed to create a new theory identified as partial load reduction theory that offers a solution to the issue of wrongful convictions as a result of public defender representation. Partial load reduction theory claims that the wrongful convictions resulting from public defender representation can be prevented by reducing the case loads of public defenders which would free up resources for more pressing cases.

CHAPTER 2

THEORY

Theory plays an important role in discerning the causal factor of why crimes take place. There are multiple criminological theories that attempt to explain the causations of the different types of crimes. However, they also suggest methods for solving the crime problem. The theories are classified into biological, psychological, and sociological explanations of crime. To qualify as scientific theories have to be logically sound and empirically verifiable. A theory can be measured through two different methods that are inductive and deductive. Inductive theory is constructed through developing systematic observations and analyzing the data. Deductive theory is developed and tested through empirical observation. Theory is an integral part of criminology. Theory serves as a strong foundation to build upon in order to explain the causation of criminality and crime. Through theory construction, the following break down the primary theory, Critical Race Theory, and the secondary theory, Social Disorganization Theory, and rebuilds a theoretical framework to be applied to the problem of wrongful convictions related to public defender representation.

Primary Theory

The primary theory, Critical Race Theory, was developed as an academic field in the mid 1970s when lawyers and legal scholars had come to the realization that there had not been any more gains in equal rights since the civil rights era. Derrick Bell and Alan Freeman formulated the idea that racism in America is normal and over time becomes natural to those living in it (Delgado, 1974). Critical Race Theory is backed by liberal scholars whose focus is to address the issue of race and racial power in the American legal system. When Critical Race Theory emerged, it did so with two underlying goals in mind. The first objective was to look at how white power and its repression of minorities had been created and maintained throughout the duration of the American legal system. Directly, it set out to explain the social structure of legal system and its foundation in equal protection. The second objective was to change the vested bond between law and racial power (Crenshaw, Gotanda, Peller, & Thomas, 2010). To do so, Critical Race Theory claims the American justice system needs to take a more retributive approach to justice through releasing nonviolent offenders who come before juries. The theory suggests that by doing so would obviate the problem. Social Disorganization Theory has similar underlying components.

Secondary Theory

Like Critical Race Theory, Social Disorganization Theory focuses on social processes as an explanation of crime rather than looking at individual criminality. Social Disorganization Theory was formulated by Shaw and McKay in 1942. Its main tenet was that communities lose their ability to self-regulate due to certain environmental factors (Rose & Clear, 1998). These factors might include immigration that results in different societal norms. This condition creates a disorganized and disrupted neighborhood where crime becomes the cultural norm. Social Disorganization Theory as well as the Critical Race Theory is analyzed in multiple studies and broken down and reconstructed to help explain the issue of wrongful convictions and court appointed counsel.

Critical Race Theory Tested in the Classroom. The first study to be evaluated was a qualitative study that used critical race theory to examine the issues that gifted African American students face. The purpose of the study was to provide teachers and counselors with insight into how race affects gifted minority students. The researchers hypothesized that race significantly impacted the participation of gifted minority students. To test their hypothesis they recruited the participation of 12 gifted African American students, 5 of whom

were males and 7 were females. The researchers administered biographical questionnaires to the participants that inquired about gender, age, grade of school, GPA, advanced courses taken, and community makeup. This provided the researchers with descriptive data. The participants were interviewed for 1 to 1.5 hours. To measure the data collected, the researchers used a grounded theory approach in which they collected the data and compared the data to formulate a conclusion. The interview results were left in their extensive descriptions. The data revealed that race did in fact significantly affect participation in enriched programs. The students reported feeling as though they were not socially accepted in the gifted programs. However, the results did not prove to have a significant impact on participation. The researchers used critical race theory to interpret the qualitative data and form a conclusion that was that racial minorities are disenfranchised from the enriched programs and majority race (Henfield, Moore, & Wood, 2008). However, there are limitations of the study. A large limitation was that the study only looked at 12 gifted minority students. Implications for future research could be to look at quantitative data that encompass a larger sample and compare more geographical areas. The next article looks at how race affect prison inmates and leisure activities.

Prison Leisure Activities and the Effects of Race. An article entitled *It's a race war: Race and leisure experiences in California state prison*, used the Critical Race Theory to guide the study that explored leisure experiences of men in prison as well as the existing disproportionate rate of incarcerated minorities. In an effort to put race, history, and the hegemony that prevails in the American justice system into an understanding, the researchers built the foundation for their study in Critical Race Theory. By using Critical Race Theory, the researchers were able to address reasons for discrimination other than skin color that were culture, community, and politics. The authors of the article provide five main tenets of Critical Race Theory before they presented their study. First, they say that race never stands alone without the influence of power structures and outside interference. Second, they claim that Critical Race Theory's main objective is to create racially neutral justice policies. Third, the authors say that Critical Race Theory puts the position of the oppressed at the front of policy decision making. Fourth, Critical Race Theory calls for research performed on and by the minority. Last, the authors claim that the Theory should be used across all fields of study in order to create Transdisciplinary ways to explore race (Richmond & Johnson, 2009). One research question raised was why the rate of incarcerated minorities is growing at a

disproportionate rate when compared to the overall population. The researchers claim that by understanding the influence of race and recreational choices they can better analyze the systematic disadvantages of the justice system. The purpose of the study was to learn about what role race plays among prisoners and their leisure choices. The researchers placed ads in local newspapers looking for males who had spent at least 6 months at the California State Prison. The researchers then conducted phone interviews with the 10 male participants; five former inmates who were white, two who were black, two who were Hispanic, and one who was Asian. The men who participated in the interviews were asked to revisit their memories of prison and share their experiences of how race affected their lives inside the prison. The interviews were transcribed and coded using open and axial coding. The coding enabled the researchers to organize the themes and create a measurement for racially organized prison politics. The researchers found that racially organized prison politics were inevitable in the incarceration of inmates in the California prison system. The research study concluded that racial organized prison politics had an influence in all decision making while in prison. While only 26.7% of the prisoners were white, they were indulged with more freedom, power, and benefits by the other prisoners and the staff. The researchers claim that this study sheds light on the fact that

racial politics exist in prison leisure activities. They go on to say that to address the issue of white privilege in prison, future research must acknowledge the findings from this study and also look into the court system and the home. The researchers claim that future research must employ the idea of change which is the foundation of the Critical Race Theory (Richmond & Johnson, 2009).

After assessing the study, it is important to note that a limitation existed. The study was limited by the small sample that was used. Using interviews of only 10 participants is hardly representative of the California prison system. However the diversity of the participants helped to obtain less bias of results. This study is useful when assessing the issue of wrongful convictions and public defender representation in that it is representative of the racial disproportionality in the prison systems and the imminent need for change. This study, which used Critical Race Theory to examine racial politics in prisons, differs from the next study to be presented in that it uses the theory to look at racial views of the general population.

American's Perceptions of Race. Critical Race Theory focuses on storytelling and persuasion to explain how Americans view race (Schneider, 2003) In the article, *Imagining*

Plantations: Slavery, dominate narratives, and the foreign, the researchers draw their theoretical influence from the tenet of Critical Race Theory that focuses on white views becoming the norm in society through the storytelling process (2008). The authors claim that the Critical Race Theory is the better of theoretical perspectives to understand how Americans view race and to demonstrate that storytelling is crucial in changing racist views. The purpose of the research study was to see how Americans view the history of slavery and how much interest they show towards the history. The researchers hypothesized that blacks, as a visitor group to the historical plantation, would constitute a high interest group because of their personal history rooted in the historical sites such as Laura Plantation. To test their hypothesis, the researchers created a survey instrument that was a Likert-scale table comprised of numerical, ordinal, and categorical questions. The instrument had 11 historical categories, 9 of which were taken from the brochures and "slaves" and "other" were inserted for the other categories. The scale measured interest by five being very interested, three as being interested, and one as being not interested. The study was conducted at Laura Plantation, a historical site. Based on the mean scores that were secured through the survey, the average visitor to the plantation is a 50 year old white female with at least a 4-year degree and a household income of

\$100,000.00 or more. The typical visitor discovered the Plantation while on personal vacation by way of brochure. The favorite part of their tour was the history. In terms of race, 85% of the visitors were white. The next largest race was other at 5.3%, followed by black at 3.5 %, Hispanic American 3.3%, and Asian American 2.9%. The participants' nationality was also measured and the majority of the visitors were from the United States at 78.1 %, followed by 21.9% of foreign respondents. When the respondents reported their income, 35% reported an annual household income of \$100,000 or more. Around 75% of the respondents reported earning over \$50,000 per year. These findings suggested that the visitors were not average Americans because the census in 2002 reported that the average American household earned \$43,318 per year. In order to draw conclusions with the information collected, the researchers employed statistical analysis. For each narrative comparison between slaves and the other historical topics, they took the mean of each and made comparisons between the different demographic groups and their support. The results indicated that slavery is a popular theme for the visitors; however, through the statistical analysis they devised a subgroup of whites that showed more interest in the categories of civil war, architecture, landscape, and heritage. The foreign groups were more interested in slaves when compared to other groups. The

results from the surveys indicated that there was an interest in slaves; however, the type of acceptance and interest was not centered on the lives of the formally enslaved. The researchers claim that there is an increasing addition of the enslaved at the historical plantation museums; however, the movement is slow and not revolutionary. The researchers go on to say that their research adds to the critical race theory in that evidence shows that most groups acknowledge the history of the enslaved. Although there is acknowledgment of discrimination, there is still much progress to be made in order to heighten awareness of racism and change the problem (Butler, Carter, & Dwyer, 2008).

Although the research study presented many aspects of how race is viewed in American culture, there was a limitation with the study. Even though 1,266 surveys were collected, the study was limited by only including one historical site in one area of the country. I found some of the results to be very interesting in that African Americans as a visitor group were not the most interested in the slave category. It is possible that the African Americans who participated in the surveys are not average, they could be outliers. However, the results would have been more clearly interpreted had there been a historical site comparison group. This study's line of reasoning could help determine individual support for criminal justice policy

implications targeting minorities. The next study uses the secondary theory, social disorganization, as its basis for the study.

Social Disorganization and Police Discretion with Juvenile Offenders. The article, *Social context of police discretion with young offenders: An ecological analysis* uses four ecological theories of crime. These are crime urbanization theory, social disorganization theory, opportunity theory, and overload hypothesis to gain a better understanding of police discretion on young offenders in Canada (Schulenberg, 2003). The author hypothesizes that police are predicted to use more formal ways of patrolling when community control is ineffective. Schulenberg claims that crime rate has a positive relationship with formal social control as well as police workload. This, in turn, Schulenberg says will have a negative effect on formal social control in that as the workload increases, police will only charge individuals with the more serious offenses and let the minor offenses go. To test her hypothesis, data on crime rates and the practices of police from 447 communities in Canada were regressed on the use of police force and the community using path analysis. For the dependent variable, Schulenberg relied upon the Canadian Uniformed Crime Reports that included not only those who were charged but also the individuals who were

apprehended and could have been charged but were released. Unemployment rate, moving rate, rental rate, and single-parent household rate were used for the independent variables. The data collected from available public sources were regressed in separate models. The models looked at the explanation of crime rate and what determined the use of formal police action. The analysis that determines crime rates revealed support for the social disorganization theory for crime because the crime rate decreased when the population increased. The analysis of what affects police discretion found strong support for urbanization theory and social disorganization theory; however, it showed no support for opportunity theory or overload hypothesis. The results suggested that the size of the community does have an effect on how the police decide which offenses to formally charge youth. The results indicated that police react independently to phenomena, municipal growth, and community breakdown (Schulenberg 2003). However, when assessing the findings of the study, it is important to note that the study does have limitations.

One limitation of the study was that unemployment rate was used both as an indicator of social disorganization as well as the sole indicator of criminal opportunity. Also in order to fully operationalize social disorganization theory, evaluation

to other variables such as ethnic heterogeneity is needed. Also to assess opportunity theory, more than one variable, unemployment rate, is needed. By not having access to rural communities, it limits the range of variation in the levels of urbanization and social disorganization (Schulenberg 2003). Schulenberg (2003) suggests that for future research time series should be used rather than cross-sectional data because community breakdown is a process that occurs over a period of time. The results provided a new way of looking at what affects crime rates and not just crime. Urbanization theory claims that crime rates will increase as population increases; however, that was not the case in the study. The study contradicted the urbanization belief. Instead, due to the increase in population, police were forced to not charge youthful offenders for minor offenses and focus on the more violent offenses. That, in turn, decreased crime rates because the minor offenses were not formally charged and therefore reported crime rates decreased. This study was replicated using 2001 data on municipal crime rates and police discretion with youth who were taken into custody in Canada.

Canadian Follow-up Study. As in the previous study, the replication study looked at the applicability of urbanization, social disorganization, opportunity theory, and work overload to

Canadian crime rates and police discretion with youth. The hypothesis is the same as the previous study; however, this research study used different indicators that were not available to Schulenberg. The dependent variables in the previous study, municipal crime rate and use by police on apprehended youth, were operationalized in the same way but were logged to reduce outliers and skewed results. The independent variables were altered from unemployment, moving rate, renter rate, and single-parent household to include: high occupational status, high education, and ethnic heterogeneity. To avoid limitations imposed by Quickstat, the research study used data taken directly from the three surveys and integrated them into one data set. The first model tests the urbanization theory of crime by means of regression of logged crime on logged population. The second model added the indicators of social disorganization. The results were consistent with the previous study that presented evidence of significant coefficients of the moving rate and one-parent household rate and no significance was shown for the unemployment and rental rate. In model 2 after the new indicators were added, a significant relationship was shown between women working and an increase in crime. In models 3-6, the applicability of the theories was applied in order to explain police discretion on formal social control on youth. The models revealed a significant relationship between police using

a formal social control on youth and an increase in urbanization. When the three new indicators were analyzed, the only significance found was in occupational status. This indicated that police use less social control in communities with higher status individuals. The results for municipal crime rates were mainly consistent with the previous study and in support of social disorganization theory; however, there was contradictory evidence for support of the opportunity theory. In the new study there was no support for opportunity theory, the results proved weak support for opportunity theory in that female employment had a positive relationship with municipal crime rate (Schulenberg, Jacob, & Carrington, 2007). As shown, the results of both studies were mainly consistent; however, by adding new indicators there were some differences. The next study uses social disorganization and routine activities theory to look at a special analysis of crime in Vancouver.

Social Disorganizations Effects on Crime. Andresen performed a research study investigating nature of automotive theft, "break- and- enter", and violent crimes in Vancouver. He synthesized social disorganization theory and routine activities theory as a theoretical base. The purpose of the study was to determine which variable relates to which theory. It was hypothesized that an increase in income will have a positive

relationship with social disorganization and that income increases would have a positive relationship with higher rates of victimization. The data were collected from the CFS data base that contains all requests of police service through 911 emergency calls. The data set was inclusive of 11,991 violent crimes, 23,262 "break- and- enters", and 36,720 auto thefts that took place in 1996. Andresen used spatial regression analysis to measure the variables and their relationships to violent crime, break- and- enters, and auto theft. The independent variables used included: ethnic heterogeneity, unemployment rate, educational level, population change, single-parent households, average income, rentals, population, number of dwellings, and youth population. The results revealed moderate support for the dependent variables for social disorganization. The unemployment rate, population change, and standard deviation of average family income show a positive relationship with the three crime rates (Andresen, 2006). However, routine activities theory supports the idea that population density would have a positive relationship with violent crime; however, when measured at the census tract level it was found to have a negative relationship. The type of measurement used in the study provided somewhat of a limitation. Future research must measure across time, measure different geographies, and use finer measurements to measure violent crime. This study has explained how the

theories can be applied to different areas to explain various social and crime issues. Both the Critical Race Theory and the Social Disorganization Theory work together and help to explain the problem of wrongful convictions resulting from indigent counsel.

CHAPTER 3

METHODS

Critical Race Theory and Social Disorganization Theory are broken down through the process of construction and reformulated to explain the issue of wrongful convictions as a result of public defender representation. Before doing so it is critical to explain theory construction.

Theory Construction

Theory can be defined as being comprised of constructs that are connected by proposals with underlying related assumptions. Theory construction is essentially model building. Model building is the construction of reality (Schwaninger & Grosser, 2008). The motivation of theory construction and model building is to solve a problem or understand a system better (Weick, 1989). In this research the reasoning for theory construction is to do both, to solve the problem of wrongful convictions and public defender representation as well as to better understand how the public defender system works. When building the new Partial Load Reduction Theory, I am designing, conducting, and interpreting possible future avenues for experimentation. In other words, I am using the Critical Race Theory and the Social Disorganization Theory to create a new

theory that will explain the issue of wrongful convictions as a result of public defender representation.

Predictive Relationships. Variables share two types of relationships that are predictive and causal. When using theory construction to explain the relationship between wrongful convictions as a result of public defender representation, a predictive relationship is identified. A predictive relationship claims that variability in A is related to variability in B. There is not a presumption of causation between the two variables. Predictive relationships only establish that variations in variable A are related to variations in variable B. By identifying the variation in A, we can infer the variation in B.

Applying Theory Construction

Theory construction can be applied to wrongful convictions as a result of public defender representation by identifying variables that will reduce the issue of wrongful convictions. First, the claim is made that public defender representation and wrongful convictions share a predictive relationship with unemployment, drug abuse, and lower income. Second, Partial Load Reduction Theory is formulated to offer a reduction of wrongful convictions by breaking down the components of Critical Race Theory and Social Disorganization theory. The Partial Load

Reduction Theory claims that by informally processing nonviolent offenders, it reduces the case loads and frees the monetary resources for public defenders and reduces the prediction of wrongful convictions. Third, Partial Load Reduction Theory explains the relationship and variation between public defender representation and wrongful convictions. Last, variables are put into place to predict ways of reducing wrongful convictions.

In the next chapter, the Critical Race Theory and the Social Disorganization Theory are broken down and reconstructed to create a new theory referred to as Partial Load Reduction theory. The theory is applied to different types of crimes and will serve as an explanation and prevention of wrongful convictions as a result of public defender representation.

CHAPTER 4

PARTIAL LOAD REDUCTION THEORY

The components of Social Disorganization Theory as well as Critical Race Theory work together to explain the issue of wrongful convictions and public defender representation by addressing the offender's race, environments in which the offenders reside, and the reactions of police officials. The theories explain only nonviolent crimes. Critical Race Theory and Social Disorganization Theory bring to the attention the disproportional amount of minorities and the treatment they receive in the justice system.

Without the Capital Get the Punishment

A Government Accountability Study revealed that racial minorities were more likely to be sentenced to death than whites (Williams & Holcomb, 2001). The theories explain how this arises and can be eliminated. As mentioned in the previous section, police are more likely to formally charge offenders in lower-income areas. This leads to an increase in case loads for public defenders and backs up the court systems. This back-up can start as early as with juvenile offenders and cause harm for long durations (Puritz & Sun, 2001). Through the theories, a solution could be found to informally handle nonviolent offenders rather

than putting all of the resources into the violent offenders. This would free up the police and court resources and obviate the problem of wrongful convictions due to lack of quality in public defenders. However, this solution can only be applied to nonviolent crimes.

Alternative Punishment. When applying the theories to crimes against persons, they do not work. It is not plausible for police to informally handle offenders who commit crimes against persons regardless of their race or environment. The main goal of the criminal justice system is to protect citizens while they carry out their daily activities. It is important to stop crimes from occurring against persons, thus punishment should be mandatory in our society. However, when assessing crimes against property and applying the theories, they could be constructed to fit. Rather than charging an offender with a crime against property and giving the offender probation that he or she will likely violate and end up back in the system contributing to case overloads, the police and courts could use a restorative justice approach. By using a restorative justice approach, the community gets involved and the offender can see the impact of his or her actions in a more productive manner. However, the theories work the best with victimless crimes. Where no victim is involved, rehabilitation would be the better

alternative. Thus, using a rehabilitative approach, the offender gets the help and treatment needed to better succeed in the community. An example of this is seen where a drug offender can receive treatment and get better instead of being incarcerated around other criminals where their behavior is likely to worsen. When looking at white-collar crime, the theories do not apply because white-collar crime offenders are not comprised by indigent offenders. The white-collar offenders are able to hire their own counsel and receive less harsh sentences. They also constitute a smaller percentage of cases and therefore are not responsible for bogging down the systems. With the above ideas stated, there are many new directions for scholars to take.

Theory Applicability

Critical Race Theory and Social Disorganization Theory have been broken down and reconstructed to show how they can reduce the issue of wrongful convictions as a result of public defender representation. Their combined approach can be renamed as Partial Load Reduction Theory. By eliminating the load of the public defenders through the reduction of formal processing, the resources provided for capital cases can be better used, which would reduce the cause of wrongful convictions as a result of public defender representation. Partial load reduction theory can lay a foundation for future researchers. There are few

research studies that evaluate the effects of wrongful convictions as a result of public defender representation.

New Avenues. Possible new avenues that the researchers may take is to evaluate the effects of wrongful convictions occurring in areas where public defenders have smaller case loads then comparing the results to areas where the public defenders have extensive case loads. When comparing, it is important for the researchers to look at the amount of time the defenders were able to meet with their clients. It is also important to evaluate the resources that were available to the public defenders. By analyzing the data, it should either strongly support the partial load reduction theory or contradict its hypothesis. According to Hudson the author of an article *Beyond white man's justice: Race, gender, and justice in late modernity*, to eliminate racial bias and inequalities in the justice system, justice needs to move beyond the formal proceedings and incorporate more restorative justice (Hudson, 2006). The partial load reduction theory follows Hudson's way of thinking in that it supports restorative justice because it reduces case loads that, in turn, free the public defenders time and resources to be spent on more pressing capital cases. However, one must acknowledge that a problem exists. As evidenced in the previous study *Imagining Plantations: Slavery,*

dominate narratives, and the foreign (Hudson, 2006), to change racial bias, views of race in all groups have to be changed as well. Both the critical race theory and the social disorganization theory have laid a strong foundation for the partial load reduction theory that works to explain how wrongful convictions as a result of public defender representation occur. As evidenced throughout the paper, the new theory has the potential to not only serve as an explanation but also as solution.

CHAPTER 5

NEW DIRECTIONS

As evidenced throughout the previous chapters and throughout existing research, racial disproportionality in the criminal justice system is a pressing issue. Wrongful convictions as a result of public defender representation are a byproduct of the overwhelming disproportionate numbers of minorities in the criminal justice system. The partial load reduction theory addresses both issues in that it seeks to establish informal processing for nonviolent crimes that frees the resources for more serious cases. The freed resources allows for public defenders to spend the time and money needed to defend capital cases. This allows for the reduction of wrongful convictions as a result of public defender representation.

Indirectly Related Research

Just as in the United States, there is a lack of research on wrongful convictions as a result of public defender representation in Australia as well. However, there are indirectly related studies that address the directly related causes. Snowball and Weatherburn with NSW Bureau of Crime Statistics and Research in Australia (2007) looked at the causes of high rates of minority overrepresentation in the prison

system. They used logistic regression analysis to test for racial bias in the sentencing of indigenous adult offenders. The study included 30,424 offenders. The final dataset removed 159, which left 30,265 offenders in the final set. Out of the offenders, 14.9% were given a prison sentence and 18.3% were identified as indigenous. The controls used in the study included age of offender at the time of the current case, gender, indigenous status, whether the offense was classified as aggravated (they only looked at violent offenses), the number of concurrent offenses, if a plea was entered, prior charges of guilt, whether the offender had been given a previous suspended sentence of periodic detention, and whether the defendant had legal representation. Their results revealed that the risk of imprisonment is much higher for indigenous than nonindigenous offenders. There study was improved by including offenders who used legal representation and those who did not. It was also improved by including offenders in the study who had prior records for which they received imprisonment. Last, the new study tested for the relationship between indigenous status and other variables in the model. The dependent variable used in the new study was the probability of receiving a "full time" sentence of imprisonment. They focused on this variable because past research has revealed that race is more likely to affect

whether an offender will receive imprisonment rather than the length of the term. Their research questions raised were:

1. "Does Indigenous status exert an effect on the risk of adult imprisonment, once relevant legal factors have been taken into account" (p.276)?
2. "Does the Indigenous status interact with other factors in shaping the risk of imprisonment" (p.276)?
3. "What is the magnitude of the effect, if any, of Indigenous status on the risk of imprisonment" (p.276)?

The results from the study revealed that indigenous status remains a significant predictor of adult imprisonment after legal factors have been included. It also revealed that indigenous status interacts with prior convictions as well as legal representation. Last, the study revealed that the residual effect of indigenous status on the risk of imprisonment is only slight after controlling for legal factors. The probability of being imprisoned for the median case in the final model is 4.47%. When the defendant is indigenous there is an increase of less than one percentage point. The researchers claim that racial biasness influences the sentencing phase even though the effects may be small. They claim that further research must be conducted and more extensive results must be obtained. Future

suggestions of the researchers include reducing the levels of indigenous involvement in crime, specifically violent crime. They also suggest reducing rates of recidivism among these offenders (Snowball & Weatherburn, 2007). However, the researchers do not present a means to obtain the goals presented.

Obtaining the Reduction of Wrongful Convictions

The partial load reduction theory offers a way of obtaining a reduction in racial disproportionality in the criminal justice system as well as reducing wrongful convictions as a result of public defender representation. The partial load reduction theory encompasses a micro level analysis of unemployment and drug abuse in lower income areas as being the root of the problem. It then incorporates a macro level of analysis that labels connectors to the issue that are a lack of legitimate means of survival, an increase in offending, formal processing, an increase in public defender case loads, and a lack of resources in the public defender system. The theory connects these micro and macro levels of analysis to explain the problem of wrongful convictions as a result of public defender representation. The partial load reduction theory model that is displayed in figure 1 and figure 2 provides suggestions to alleviate the issue of discussion. The theory suggests that by

providing job training and rehabilitation programs that affect the micro level, bigger changes can take place on the macro level. By providing the changes less formal processing is used. This provides a legitimate means of survival, decreases offending, and decreases the case loads of public defenders that frees up the systems resources to be used on more pressing cases. The theory claims that if followed, this model can reduce the problem of wrongful convictions as a result of public defender representation. This model is displayed in figure 1 and figure 2 on the following pages.

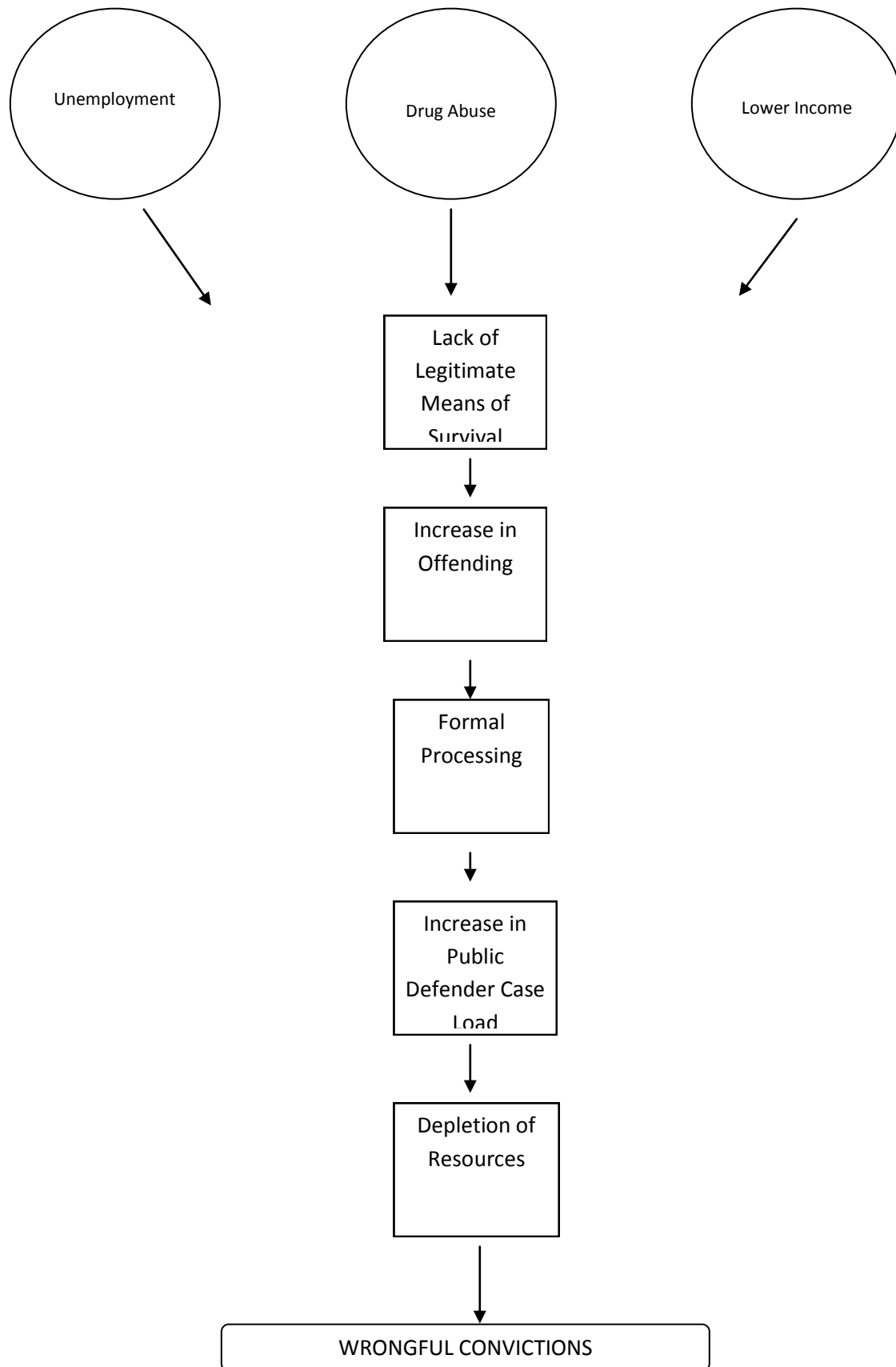


Figure 1 Problems

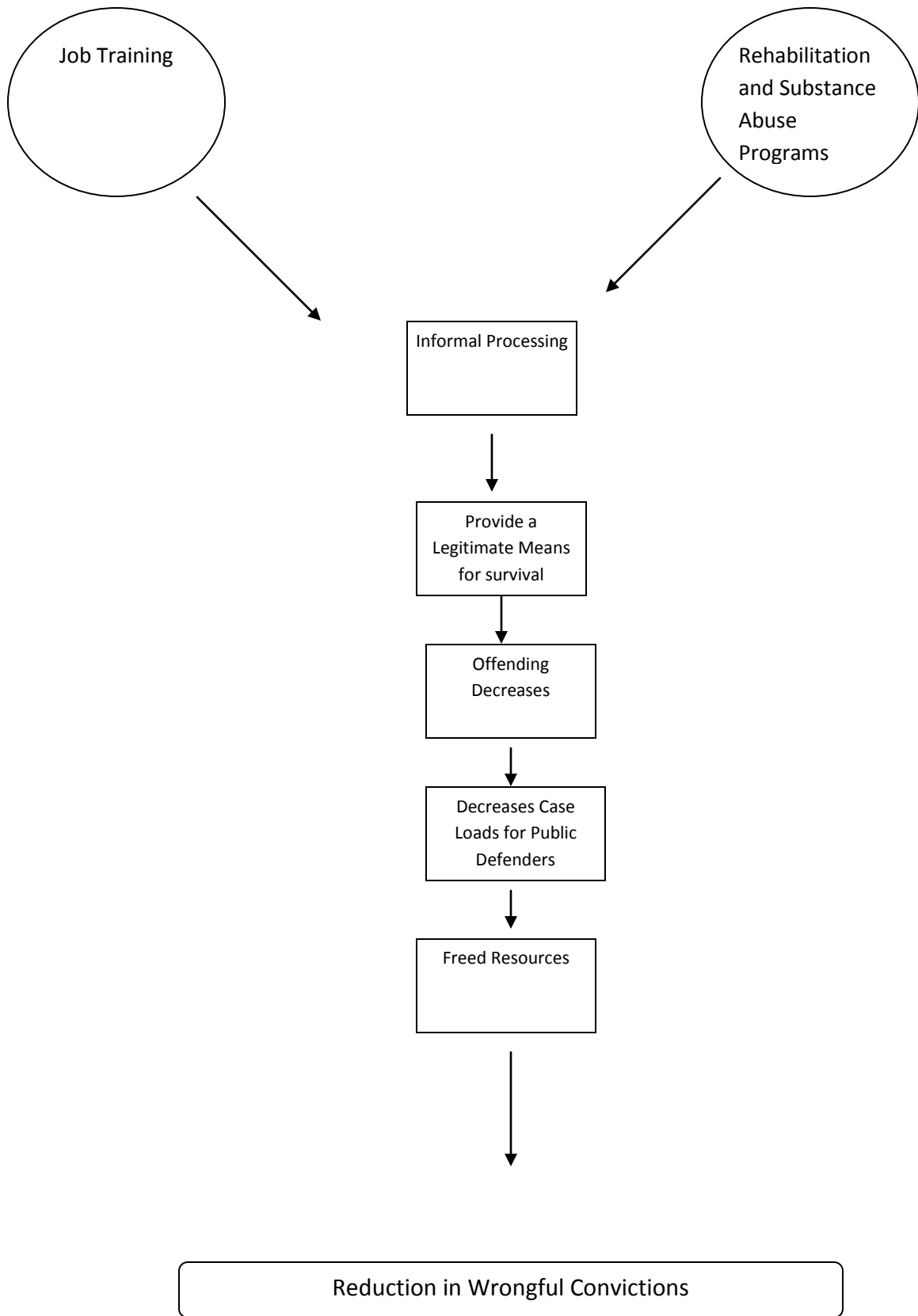


Figure 2 Solutions

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VITA

ANNIE E. ROSS

Personal Data: Date of Birth: May 9, 1986
 Place of Birth: Johnson City, Tennessee
 Marital Status: Single

Education: Public Schools, Elizabethton, Tennessee
 B.S. Criminal Justice, East Tennessee
 State University, Johnson City,
 Tennessee 2009
 M.A. Criminal Justice and Criminology,
 East Tennessee State University,
 Johnson City, Tennessee 2010

Professional Experience: Graduate Assistant, East Tennessee
 State University; Office of Admissions,
 2009-2010
 Public Defender Intern, Johnson City,
 Tennessee 2009
 Re-election Campaign Aide, Kent
 Williams, Elizabethton, Tennessee 2008
 Legislative Intern; Tennessee State
 Legislature, Nashville, Tennessee 2008

Honors and Awards: President of Delta Alpha Pi 2008-2009
 Vice President of Alpha Phi Sigma 2008-
 2010

